IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 272 OF 1996

The State of Maharashtra ..... Appellant.

versus

Ragho Bendu Patil & 8 ors ..... Respondents.

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Shri A.M.Shringarpure APP for the State.
Shri V.S.Gharat for the Respondents.

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CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.

DATED; 23RD JUNE, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 27-12-1995 passed by the IInd Additional Sessions Judge, Raigad - Alibag in Sessions Case No. 159 of 1990 the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story as emerges on reappreciation of the evidence is that there was long standing enmity over agricultural land between the party of the accused and the party of the complainant P.w.5 Dagadu Mhatre. The incident occurred on 5-9-1990 around 5 p.m. when all the eight accused persons armed with certain weapons came to the field of the victim and seriously assaulted several members of the family of P.w.5 Dagadu Mhatre. The attack on Kondiram was rather severe and resulted in his death on the spot. After the assault, the accused ran away from the spot. The matter was reported to the police station. Investigation was completed, accused persons were arrested and were prosecuted for the offence mentioned above.

4. The prosecution examined as many as 11 witnesses to prove its case and the learned trial Judge on appreciation of that evidence as also the documentary evidence in the shape of panchanama and the recovery held that the prosecution has miserably failed to bring home the guilt of the accused and therefore acquitted all the accused persons by the impugned order. It is this order of acquittal which is challenged in this appeal by the State Government.

5. The learned APP appearing on behalf of the State, assailed the order of acquittal on several grounds. The contention in nutshell is that there was ample evidence on record to prove the assault by the accused persons on the victim, which included the deceased Kondiram and merely because the witnesses were closed relations of the victim, the learned Judge ought not to have discard their evidence and acquit the accused persons. According to the learned APP, only mere relations are about to be the witness when assault take place on the family as a whole by the group of accused persons, who also are the group as a whole. Absence of independent evidence cannot therefore be a ground for acquittal, which otherwise according to the APP is unimpeachable. We have to consider this evidence and the submission made by the learned APP in the light of the reappreciation of the evidence, as made by us.

6. Deceased Kondiram, P.w.5 Dagadu Mhatre and Changunabai are the persons injured. It is also the case of the prosecution that even Anantibai was also injured. As aforesaid the prosecution has examined 11 witnesses. P.w.1 Exh.40 is Changunabai who lodged the complaint and disclosed commission of the assault by the accused on victim Kondiram. She has narrated the whole incident of assault. P.w.2 Usha is the daughter

of Dagadu Mhatre, who was injured. P.w.3 Kasankhan has prepared the map of the spot where the incident occurred and was at the relevant time Circle Officer. P.w.4 Lahu is the panch. P.w.5 Dagadu is the injured eye witness. P.w.9 Anandibai is another injured eye witness. P.w.6 is also a panch. P.w.7, 8 and 10 are the doctors who examined the victim and also the injured persons. P.w.11 is the investigating officer and it is on the basis of these evidence that the learned trial Judge came to the conclusion of guilt.

7. The scrutiny of the judgment of the learned trial Judge will disclose an elaborate discussion of the entire evidence on record. He has also scrutinised the evidence of eye witnesses, who have stated the manner in which the assault took place. He has noticed the discrepancies and contradictions in their evidence and was of the opinion that the same are material in nature.

8. In para 15 of the judgment the learned Judge discussed the question of availability of independent witness and their non examination in the court by the prosecution. The scrutiny of the deposition of eye witnesses that P.ws. 1, 2, 5 and 9 discloses that several persons were there in the vicinity of the spot

where the assault occurred. There is no evidence on record to show that though the assault has taken place in the vicinity of houses and field and people also residing in the village but at about 5 and 5.30 in the afternoon, nobody was present when such a crucial assault took place. These eye witnesses have very categorically stated in their deposition that when the assault was going on they were shouting. Yet there is no independent evidence led by the prosecution to prove the assault. In fact the learned Judge has observed, in our opinion, rightly that the investigating officer has not made any attempt to trace out any independent witness during the course of investigation. There is not even a statement by the investigating officer P.w.11 that at the time when the assault took place there was no other witness present. Infact in his cross examination P.w.11 has admitted that when he visited the spot, several villagers gathered there. But he did not bother to record the statement of any one of them.

9. Then, we have to consider the evidence of doctors who described the injuries caused to the victim and also to the other injured eye witnesses. It will be seen that the injuries as deposed to by the doctors as having found on the body of the injured persons, that

evidence does not corroborate the eye witnesses account of the four eye witnesses examined by the prosecution. The manner in which the assault is described by these eye witnesses, goes to show that the assault was brutal and consequently the injury caused to them should have been more. Taking into consideration therefore the fact that the eye witnesses have exaggerated the assault and the prosecution has failed to examine independent witnesses though available, there has been material contradictions in the testimony of eye witnesses, there has been positive attempt on the part of eye witnesses to narrate the incident, and it was accepting these lacunas in the prosecution and the evidence, the learned trial Judge proceeded to acquit the accused persons.

9. In our opinion, therefore the order of acquittal cannot in such circumstances be called perverse or the findings cannot be called without any basis in the evidence. The maximum that can be said in favour of the prosecution that it has failed to bring on record independent evidence though available, is that a different conclusion from the evidence of eye witnesses regarding the incident is possible. It is an established principle of law that even if such a different view of evidence is possible and one in

favour of the accused is taken by the court of competent jurisdiction, the appellate court, as we are, should be loath to interfere in the matter. In such circumstances, in our opinion, there is no substance in the matter and the appeal deserves to be dismissed and is accordingly dismissed.

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